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No. 22

In the Supreme Court of the United States

OCTOBER TERM, 1938

THE UNITED STATES OF AMERICA, PETITIONER

v.

**CONTINENTAL NATIONAL BANK AND TRUST COMPANY,
TRUSTEE UNDER THE LAST WILL AND TESTAMENT
OF JAMES DUGGAN, DECEASED, ET AL.**

**ON WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

FURTHER REPLY TO RESPONDENTS MOTION TO DISMISS

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FURTHER REPLY TO RESPONDENTS' MOTION TO DISMISS

On October 10, 1938, a motion was filed by the Continental Illinois National Bank & Trust Company of Chicago to dismiss the writ of certiorari in the above-entitled proceeding in so far as it related to such Bank as trustee of the residuary trust created by Item 6 of the last will and testament of James Duggan, deceased. An affidavit executed by an officer of that Bank was attached in support of the motion to dismiss in which it was stated that the Bank had on April 6, 1938, transferred to the Continental Illinois Bank & Trust Company

of Chicago, as trustee, pursuant to the terms of the will of Henry Duggan, the assets theretofore held by it as trustee under Item 6 of the will of James Duggan, deceased.

At the time respondents' motion to dismiss was filed this cause was on call for argument within a few days, leaving insufficient time for the petitioner to verify the alleged transfer. Without either admitting or denying that the transfer of trust assets had been made as alleged, the petitioner filed a reply to the respondents' motion in which it was pointed out that the alleged transfer, under the circumstances, affords no basis for granting the motion.

This Court continued the hearing of the cause on the merits pending disposition of the motion to dismiss, and other motions filed, thus affording an opportunity to verify the alleged transfer of trust assets. At the request of the Tax Division of the Department of Justice the Internal Revenue Agent in Charge at Chicago, Illinois, sought to verify the alleged transfer of assets, but both the Continental National Bank & Trust Company of Chicago and the Continental Illinois National Bank & Trust Company of Chicago, on advice of counsel, refused to disclose any facts regarding the alleged transfer. The Federal Bureau of Investigation was thereafter requested to investigate and advise the Department concerning such transfer. Again the officers of both Banks refused to disclose any information concerning the alleged transfer.

Whether the respondent Bank made a valid transfer of trust assets is a question of law, and since both Banks have refused to disclose any of the facts relating to the alleged transfer, the petitioner is not in a position to admit that a valid transfer was made. The allegation that the respondent transferred to the Continental Illinois National Bank & Trust Company of Chicago the trust assets held by it is therefore denied. The absence of proof establishing a valid transfer is accordingly an additional reason for denying the respondents' motion to dismiss.

Respectfully submitted.

ROBERT H. JACKSON,
Solicitor General.

NOVEMBER 1938.

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